HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITIONS Nos:21609 & 22314 OF 2007

Dated: 05.11.2007

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W.P.NO:21609 OF 2007

Between:

A. Ashok Kumar

..**Petitioner**

And

1. Government of Andhra Pradesh rep., by
its Secretary, Transport, Roads & Buildings
Department, Secretariat, Hyderabad and another.

..Respondents

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W.P.NO:22314 OF 2007

Between:

M. Maheswara Naik

..**Petitioner**

And

1. Government of Andhra Pradesh rep., by
its Secretary, Transport, Roads & Buildings
Department, Secretariat, Hyderabad and another.

..Respondents

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&

HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITIONS Nos:21609 & 22314 OF 2007

COMMON ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

Since both the writ petitions arise out of common order and the parties in both the writ petitions and the issue involved in both the writ petitions are one and the same, both the writ petitions are disposed of by a common order.

W.P.No.21609 & 22314 of 2007 are filed aggrieved by the common order, dated 10.9.2007 passed by the A.P. Administrative Tribunal in O.A Nos.421 of 2007, 5489 of 2006 and batch.

The petitioners in both the writ petitions are the applicants before the Tribunal. They along with some others filed the above O.As seeking to declare that they are entitled for selection and appointment to the post of Assistant Executive Engineer in A.P. R&B Engineering Service also (Post Code-1) in Notification No.10/2006 by holding G.O.Ms.No.230, T, R & B (Ser) Dt.02.11.2005 and consequential deleting of Mechanical Engineering against the post Code I in paragraph No.2 of Notification 10/2006 as invalid and consequently, to direct the respondents to consider the applicants' candidature for the post of Assistant Executive Engineer in A.P.R & B Engineering Service also (Post Code-I) in Notification 10/06 on the file of the 2nd respondent and select and appoint them to the said post duly following the reservation applicable to them.

It is the case of the petitioners-applicants that they belong to

BC-'B' and 'ST' community respectively and they being graduates in Mechanical Engineering applied for the post of Assistant Executive Engineer in A.P. R&B Engineering Service. It is their case that they are entitled to be selected and appointed, if they come in the merit list, in accordance with the rules issued in G.O.Ms.No.103 T, R & B Department, dated 22.5.1996 and that the Government issued G.O.Ms.No.103, dated 22.5.1996 by framing the rules for the A.P. R&B Engineering Service and the post of AEE is found at Category VI in Class A in Rule 2 of the said G.O. and the qualifications prescribed for the said post are Bachelor's Degree in Civil or Mechanical Engineering of University of India Established or incorporated under a Central Act, Provincial Act or a State Act or an Institution recognized by the University Grants Commission as equivalent qualification. As per rules in G.O.Ms.No.168 issued by the A.P. Public Health and Municipal Engineering Service, for the post of Assistant Executive Engineer, the qualifications prescribed are similar to that of R & B Engineering Service Rules.

While so, the 2nd respondent issued notification No.10 of 2006 inviting applications for the post of AEE, for which the qualification prescribed is BE/B.Tech/AMIE (A & B) Civil Engineering branch of a University in India. But the qualification of Mechanical Engineering Branch has been deleted and therefore, the notification is contrary to the special rules and the respondents shall consider the Mechanical Engineering graduates for the post of AEE R & B as per the Special Rules contained in G.O.Ms.No.103, dated 22.5.1996.

The tribunal having observed that though the executive

instructions in G.O.Ms.No.230 dated 2.11.2005, which cannot override the statutory rules, deleting the qualification of Mechanical Engineering for the post of AEE, have been issued but subsequently, the Government has made the necessary amendments to the Rules vide G.O.Ms.No.171, deleting the Mechanical Engineering and therefore, the action of the respondents cannot be found fault with, dismissed the O.As. Having aggrieved by the same, the petitioners-applicants have preferred the present writ petitions.

Heard the learned Counsel on record and perused the material available on record.

Before going into the merits of the case, it is relevant to extract the G.Os so as to examine as to the qualification prescribed for the post of AEEs.

Rule 5 of G.O.Ms.No.103 Transport, Roads and Buildings (S.II), dated 22.5.1996 published in A.P. Gazette, Part I, (Extr.), Dt.17.8.1996 reads as hereunder:

Qualifications: (a) No person shall be eligible for appointment to the categories specified in column (1) of the table to these rules by the method specified in column (2) unless he/she possesses the qualifications specified in the corresponding entry in column (3) thereof;

(b) Assistant Engineer, Draughtsman, Special grade or Grade I or Assistant Executive Engineer or Deputy Executive Engineer shall put in not less than two years of service in investigation work and Designs work for consideration for appointment by transfer or

promotion to the next higher category of Deputy Executive Engineer or Executive Engineer, as the case may be.

Class & Category	Method of appointment	Qualifications
Class A: 6.Assistant Executive Engineer	By direct recruitment or by appointment by transfer	Must possess a Bachelor's degree in Civil or Mechanical Engineering of a University in India established or incorporated by under a Central Act, Provincial Act or a State Act or an Institution recognized by the University Grants Commission or a n equivalent qualification.

According to the above Rule, the qualifications required for the post of AEE in R & B Engineering Service, also include Bachelors degree in Mechanical Engineering.

According to the notification No.10 of 2006, which is impugned in the present O.As., the qualifications required for the post of AEE in R & B Engineering Service is B.E/B.Tech./AMIE (A & B) Civil Engineering Branch of a University in India established or incorporated by or under central Act, Provincial Act or a State Act or an institution recognized by the University Grants Commission or an equivalent qualification.

At this stage, it is the contention of the learned Counsel for the petitioners-applicants that the notification is contrary to the statutory

rules issued in G.O.Ms.No.103 and the applicants are entitled to be considered for the post of AEE as per the Special Rules contained in G.O.Ms.No.103, dated 22.5.1996.

On the other hand, it is the contention of the learned Government Pleader that the Department is executing only Civil Works viz., Roads, Construction of Buildings and Bridges and there are no on-going works requiring the services of the Mechanical Engineers in the Department and in view of this position, the Government issued orders in G.O.Ms.No.230, TR & B, dated 2.11.2005 deleting the qualification of Mechanical Engineering prescribed for direct recruitment to the post of AEE and the Government also subsequently issued orders amending the services rules in G.O.Ms.No.171, TR & B, dated 18.9.2006. It is also contended that the impugned notification itself made it clear that the recruitment would be processed as per the notification and as per the rules and instructions issued by the Government and also as decided by the Commission from time to time in terms of respective Special Rules/Adhoc Rules governing the Recruitment and G.O.Ms.No.168, M.A., dated 20/2/1965 and time to time orders of Government and G.O.Ms.No.103, Transport, Roads and Buildings (S.II), dated 22.5.1996, G.O.Ms.No.230 TR & B (Ser) Dept., dated 2.11.2005 other related G.Os., rules etc., and therefore, the applicants are not entitled to be considered.

Now, we have to examine as to whether the rule as to the qualification of mechanical engineering is in existence prior to the notification in question or not and whether the amendment of rules as per G.O.Ms.No:171, dated 18.9.2006 prevails over the notification.

The fact that remains undisputed is that as per terms of G.O.Ms.No.103, requisite qualifications for the post of AEE in R & B Dept., are Bachelors Degree in Civil or Mechanical Engineering.

It is the contention of the respondents-authorities that on the earlier occasion, 32 Mechanical Engineering graduates have joined in R & B Department and they were trained to acquaint with the Civil Engineering works and the department has now disbanded all the mechanical divisions and there is no requirement of personnel possessing Mechanical Engineering qualification and in this regard, a requisition was made to the 2nd respondent and in response to the same, the 2nd respondent issued the notification inviting the applications from the candidates possessing Civil Engineering Branch.

At this stage, it is relevant to note the conditions stipulated in the notification as to the consideration of the rules framed from time to time, as under:

> ***"The recruitment will be processed as per the notification and as per the rules and instructions issued by the Government and also as decided by the Commission from time to time in terms of respective Special Rules/Adhoc Rules governing the Recruitment and G.O.Ms.No.168, M.A., dated 20/2/1965 and time to time orders of Government and G.O.Ms.No.103, Transport, Roads and Buildings (S.II), dated 22.5.1996, G.O.Ms.No.230 TR & B (Ser) Dept., dated 2.11.2005 other related G.Os., rules etc., applicable in this regard."***

It is clear that the above notification has been issued as per G.O.Ms.103 as well as G.O.Ms.No:230 and other related rules. It is pertinent to note that the rules in question have, as a matter of fact, been framed under G.O.Ms.No:103. Subsequently, due to the exigency arisen in the administration of the Department, a representation has been made by the Department and consequently, G.O.Ms.No:230, dated 2.11.2005 has been issued deleting the qualification i.e., the Mechanical Engineer as one of the required qualifications from the rules framed under G.O.Ms.No:103. It can be said that there is no such amendment to the rules framed under G.O.Ms.No:103 by the date of notification, but, there are executive instructions issued under G.O.Ms.No:230 deleting the qualification i.e., the Mechanical Engineering as one of the required qualifications. In this regard, it is needless to observe that the executive instructions issued under G.O.Ms.No:230, cannot override the rules framed in the year 1996. Of course, the amendment of the rules, which were framed in the year 1996, deleting the qualification i.e., mechanical engineering took place vide G.O.Ms.No:171, dated 18.9.2006, which is undisputedly subsequent to the issuance of the notification in question.

In this background of the matter and in the present facts and circumstances of the case and in view of the rules framed in the year 1996, there is no other go except to hold that the amendment of the rule vide G.O.Ms.No:171, dated 18.9.2006 deleting the qualification of Mechanical Engineering, which is subsequent to the notification in question, cannot have the impact on the notification in question in the

instant case. During the course of hearing of these two writ petitions, written instructions have been placed before this Court. They shall be treated as form part of the record.

In this view of the matter and in view of the written instructions submitted by the learned Government Pleader that the petitioners-applicants have come up for selection for the second preference in R & B Department, We feel it a fit case wherein the cases of the applicants-writ petitioners shall be considered for selection in R & B Department, without disturbing the selection of the candidates already made. It is needless to observe that after the due selection of the applicants-writ petitioners, they shall be subjected to the training programme as was done in the case of 32 mechanical engineering graduates. It is made clear that this order shall not be a precedent in future cases.

Subject to the above direction, these writ petitions are allowed. No costs.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 5th November, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:21609 & 22314 OF 2007

(Common Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

Dated: 05.11.2007

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